

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**INDEPENDENT ASSOCIATION OF
PUBLISHERS' EMPLOYEES, CWA
LOCAL 1096, AFL-CIO, CLC**

Union

and

Case No. 8-UC-352

DOW JONES & COMPANY

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, hereinafter referred to as the Act, the Parties requested that, pursuant to Section 102.63(b) of the National Labor Relations Board's Rules and Regulations, a hearing be waived and a decision be made based upon the Parties' stipulated facts and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board, hereinafter referred to as the Board, has delegated its authority in this proceeding to the undersigned.

Upon the entire stipulated record in this proceeding, the undersigned finds:¹

1. The Employer-Petitioner is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.

2. The Union is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

¹ The Petitioner and the Employer filed briefs which have been duly considered.

The Employer, a Delaware corporation with its principal place of business in New York City, is a publisher of business and financial information with numerous locations in the United States and Canada. The Employer has a facility in Bowling Green, Ohio, (BG facility) which is the only facility at issue in the instant matter. The Bowling Green facility produces *The Wall Street Journal* and *Barron's Business and Financial Weekly* for distribution to subscribers and retailers in the eastern Mid-West.

The Union is the exclusive collective bargaining representative more than 2500 of the Employer-Petitioner's employees in approximately 53 of the Employer's facilities nationwide and in Canada, hereinafter referred to as the "nationwide unit." The Parties have had a stable bargaining relationship for over 60 years. The Union and the Employer-Petitioner are parties to a collective bargaining agreement with effective dates from May 1, 1999 to April 30, 2002. The collective bargaining agreement specifically provides that the contract applies only to facilities where the Union has demonstrated a majority of support of eligible employees and excludes those employees employed in the "typographical, stereotyping, press, mailing, paperhandling, delivery and machinist departments." The Employer-Petitioner has a number of facilities, including numerous printing plants, where the Union has not demonstrated majority of support of eligible employees.

The Employer maintains all of its labor relations functions, human resource functions, administrative support, benefits and payroll at its facility in South Brunswick, New Jersey.

In April, 1997, the Union was

At the time that the unit was certified, there were a number of employees working in the BG facility in the Communications and Network Service department. ("CNS") The CNS department was responsible for the receipt of papers via satellite transmission, processing film

and producing metal printing plates that were then turned over to the pressman. The CNS employees were also responsible for the support of electronic equipment throughout the plant, including the pressroom and the mailroom. The CNS employees reported directly to the on-site CNS supervisor, while the production employees reported directly to the production manager of the BG facility. The CNS employees were excluded from the unit of BG production employees certified by the Board in 1997.³ By consent of the Parties, the building maintenance workers at the BG facility were included in the BG Production unit.

The collective bargaining agreement in the nationwide unit specifically excludes “typographical, stereotyping, press, mailing, paper handling, delivery and machinist departments.” Therefore, the Parties negotiated and executed a separate collective bargaining agreement for the printing plant employees at the BG facility.

The collective bargaining agreement for the B.G. production plant employees (hereinafter referred to a “BG contract” and “BG Production unit”) has effective dates from February 7, 2000 to December 31, 2001. The recognition clause provides:

The Company recognizes the Union as the exclusive representative for the purposes of collective bargaining with respect to rates of pay, wages, hours, and all other conditions of employment for all full-time and regular part-time press, mailroom, machinist and building maintenance employees employed by the Company at its Bowling Green, Ohio production plant; but, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act and all other employees.

In 1999 and 2000, the Employer was engaged in a re-organization project, which included the restructuring of the Employer’s Information Technology departments. The reorganization was conducted with the cooperation of the Union and was specifically negotiated

² Case No. 8-RC-15507

in the 1999-2000 collective bargaining agreement for the nationwide unit. As a result of the reorganization project, the CNS job classifications were transferred from the CNS department to the production department. The job classification titles were changed and the new department was called Technology Services. (“TS”)⁴

Following the restructuring, the Union has continued to represent approximately 100 employees in the nationwide unit who were formerly classified as CNS employees and are currently classified as TS employees.

Since the reorganization, the TS employees at the Bowling Green facility have reported directly to the TS Manager, who reports to the Production Manager. The employees who work in the pressroom and the mailroom report to the Press/Mail foreman, who reports to the Production Manager. The building maintenance department reports to the Production Manager. The stipulated facts provide that all local plant functions, such as work schedules, hiring, discipline and vacation schedules are under the control of the BG Production Manager. The Circulation department employees report to the Circulation Manager.

By letter dated January 29, 2001, the Union informed the Employer that a majority of the five (5) TS employees at the BG facility had signed authorization cards. The Employer agreed to a card check but reserved its right to consider the TS employees at the BG facility as part of the BG Production unit or as part of the nationwide unit. A review of the authorization cards from the TS employees by a neutral third party demonstrated that the Union in fact achieved majority support.

³ It should be noted that CNS employees in other facilities were included in the nationwide unit, but the Union did not enjoy majority support of all eligible employees at the BG facility.

⁴ The job titles were changed to “System Support Operator”, “System Support Analyst”, and “System Support Specialist.”

The Employer-Petitioner seeks to clarify B.G. Production unit to include the Bowling Green TS employees. The Employer-Petitioner argues that the Bowling Green TS employees should be included in the B.G. Production unit because they share a community of interest with the other employees in the Production unit. The Union contends that the Bowling Green TS employees should be included in the nationwide unit with the other 100 represented TS employees employed by the Employer throughout the country and in parts of Canada.

The Board in Gould, Inc., 263 NLRB 442, 445 (1982), defined accretions to be “the addition of new employees to an already existing group or unit of employees.” The Board considers a variety of factors including, “integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history and interchange of employees.”⁵

The Employer Petitioner contends that the TS employees at the Bowling Green facility share a close community of interest with the BG Production employees, including common supervision and integration of work assignments.

For the reasons set forth below, I find that the TS employees should not be accreted into the BG production unit. I find that despite the Employer-Petitioner’s 1999-2000 corporate reorganization, the job classifications in the TS department are not newly created positions nor have they substantially changed since the effective date of the BG production unit’s collective bargaining agreement. Furthermore, the stipulated facts demonstrate that the TS employees at the Bowling Green facility have historically been excluded from the BG production unit.

The Employer contends that the TS classifications created as a result of its corporate reorganization are either new or significantly altered positions. Since those positions were not

created or altered until after the execution of the BG Production units' contract, the Employer argues that the TS classifications are appropriately treated as an accretion to the BG Production unit. The stipulated facts and supporting briefs clearly demonstrate that the TS employees perform the same page reception, film processing and plate making, as well as the technical support and electronic equipment repair, as the CNS employees did prior to the reorganization. The only demonstrable change is that the TS employees report to a different supervisor.

The Board stated in Ziegler, Inc., 333 NLRB No. 114 (2001),

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement, or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category-excluded or included-that they occupied in the past. Clarification is not appropriate, however, for upsetting ... an established practice of such parties concerning the unit placement of various individuals. (citations omitted.)

In Robert Wood Johnson University, 328 NLRB 912, 914 (1999), the Board concluded that “unit clarification may not be used to add to a unit an employee classification which historically has been excluded from the unit.” Such historical exclusion of an existing classification has been found to be a determinative factor in precluding an accretion. In United Parcel Service, 303 NLRB 326, 327 (1991), the Board stated, “

The limitations on accretion,..., require neither that the union have acquiesced in the historical exclusion of a group of employees from an existing unit, nor that the excluded group have some common job-related characteristic distinct from unit employees. It is that fact of historical exclusion that is determinative.

⁵ Id. at 445.

It is clear from the stipulated facts and the supporting briefs that at the time of the certification of the BG Production unit, the Parties consented to the inclusion of the Building Maintenance employees, yet expressly excluded the CNS employees.

As set forth above, it is clear that the corporate reorganization has not substantially changed the job duties and responsibilities of the TS employees to warrant that their accretion into the existing BG Production unit.⁶ Furthermore, as the CNS employees were specifically excluded from the BG Production unit at the time of the 1997 certification and the subsequent collective bargaining agreement, I find that it is not appropriate to accrete the TS employees into the BG Production unit.

The Employer further contends that the TS employees at the BG facility work in close proximity with the BG Production unit employees in a functionally integrated process of producing papers. In this connection, the Employer argues that the TS employees share a sufficient community of interest with the BG Production unit employees to appropriately include the TS employees in the BG Production unit. The Employer-Petitioner argues that since the TS employees are part of an integrated production process, they should be included in a plant-wide production and maintenance unit. The Employer cites Airco, Inc., 273 NLRB 348, 349 (1984) and Kalamazoo Paper Box Corp., 136 NLRB 134, 136 (1962) in support of its position that a plant wide unit is presumptively appropriate. It should be noted that those cases are factually distinguishable as they dealt with initial organizing efforts and not unit clarification.

⁶ In support of its position, the Employer-Petitioner cites Frito-Lay, Inc., 177 NLRB 820, 71 LRRM 1442, 1443-44 (1969), in which the Board found that organizational structure changes of the business rendered a previously certified unit void. I find that this case is distinguishable from the instant matter. In that case, at the time of the certification, the employer's business was divided into autonomous geographic groupings. The union sought to represent the employees in three specific districts in which the employer's area manager had considerable autonomy. Pursuant to the employer's corporate restructuring, the area manager no longer had such autonomy, which eliminated the community of interest among the employees in the three districts.

It is clear from the relevant case law that the Board has taken a limited approach in finding accretions to existing bargaining units.

Based on the foregoing, and the record as a whole, I shall order that the unit clarification petition be dismissed because of the contractual and historical exclusion of the disputed employees from the unit.

ORDER

IT IS HEREBY ORDERED that the petition be dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by July 2, 2001.

Dated at Cleveland, Ohio, this 18th day of June, 2001.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

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